

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NATIONAL IMMIGRANT JUSTICE	)	
CENTER,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
HOMELAND SECURITY, and UNITED	)	
STATES IMMIGRATION AND CUSTOMS	)	
ENFORCEMENT,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to order defendants United States Department of Homeland Security (“DHS”) and United States Immigration and Customs Enforcement (“ICE”) to produce information related to intergovernmental service agreements (“IGSAs”) between DHS or ICE and any state, municipal, or county entity regarding the housing of immigrant detainees. DHS/ICE has failed to conduct an adequate search for responsive documents to plaintiff National Immigrant Justice Center’s (“NIJC”) April 27, 2011 FOIA request seeking this information.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

3. Venue lies in the Northern District of Illinois pursuant to 5 U.S.C. § 552(a)(4)(B) because NIJC’s principal place of business is within this district.

## **PARTIES**

4. Plaintiff NIJC is an Illinois non-profit entity dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. NIJC provides direct legal services to more than 10,000 individuals each year and advocates for these populations through direct representation, policy reform, impact litigation, and public education. It is crucial to NIJC's mandate to obtain information regarding the government's detention of non-citizens to ensure the protection of civil rights and liberties of detained individuals where there are no formal mechanisms to ensure such oversight. NIJC's principal place of business is Chicago, Illinois. NIJC submitted the FOIA request that is the subject of this action.

5. Defendant DHS is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). DHS has possession of, and control over, the information sought by NIJC under FOIA.

6. Defendant ICE is a component agency of DHS and is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). ICE has possession of, and control over, the information sought by NIJC under FOIA.

## **FACTUAL ALLEGATIONS**

7. DHS/ICE enters into contracts with various state, municipal, and county facilities around the country to detain immigrants.

8. DHS/ICE contracts with these facilities to detain immigrants are known as "inter-governmental service agreements," or "IGSAs."

9. DHS/ICE does not regularly and voluntarily publish any inspections, reviews or audits - whether formal or informal - for compliance with governing detention standards for any of the facilities under contract with it.

10. On April 27, 2011, NIJC submitted a request pursuant to FOIA to DHS/ICE requesting various documents in DHS/ICE's possession. Exhibit A. Specifically, NIJC requested:

1. Please provide copies of all intergovernmental service agreements ("IGSAs") executed at any point after 2002 between ICE or DHS and any state, municipal or county entity;
2. Please provide copies of all IGSAs executed at any point after 2002 between federal agencies other than ICE and DHS, including the U.S. Marshals, the Office of the Federal Detention Trustee, and the former Immigration and Nationality Service, with any state, municipal or county entity, which are in possession of ICE or DHS;
3. As to any IGSA contract extensions executed after 2002 between ICE, DHS, or other federal agencies, please provide the contract extension as well as the original contract, if not provided pursuant to paragraph 1 or 2 of this request;
4. Please provide copies of all contract detention facility agreements ("CDFs") currently in effect to house immigrant detainees at any privately-owned facility, including those executed by ICE or DHS, and those executed by other federal agencies which are in possession of ICE or DHS;
5. Please provide copies of all current agreements or Memorandums of Understanding ("MOUs") with any other federal entity to house immigrant detainees;
6. Please provide copies of all records related to reviews, audits, and inspections conducted by DHS/ICE/ERO [DHS's branch for Enforcement and Removal Operation] or any other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; or in facilities that house immigrant detainees for fiscal years 2007, 2008, 2009, 2010, and 2011;
7. Please provide copies of any ratings assigned by ICE, DHS, or ERO to any IGSA, CDF, or federal facility employed to house immigrant detainees, from 2007 to the present. Please also provide worksheets, evaluations and/or criteria requirements for any review, audit, or inspection conducted by DHS/ICE/ERO or by any

other governmental entity; or by any private entity contracted by ICE/ERO, such as the Nakamoto Group; and

8. Please provide any evaluations performed by any non-governmental entity, such as the American Bar Association (ABA), for fiscal years 2007, 2008, 2009, 2010 and 2011, through the present.

*Id.*

11. The information was requested to “obtain information to further the public’s understanding of federal immigration detention policies and practices” and to “inform the public of the scope and effect of the government’s collaboration with local detention facilities.” *Id.*

12. DHS/ICE received NIJC’s April 27, 2011 FOIA request on May 3, 2011. Exhibit B.

13. DHS/ICE responded to NIJC’s April 27, 2011 FOIA request on June 21, 2011, assigning it reference number 2011FOIA8213.<sup>1</sup> *Id.*

14. In its June 21, 2011 response, DHS/ICE indicated that information pertaining to Requests 1-3 and 5-8 in NIJC’s April 27, 2011 FOIA request could be found “online in our ICE website under the section ‘ICE FOIA Library.’ ” *Id.* DHS/ICE also stated that it was still processing NIJC’s request for the information in Request 4 of NIJC’s April 27, 2011 FOIA request. *Id.*

15. On August 26, 2011, NIJC responded to DHS/ICE’s preliminary response to NIJC’s FOIA request. Exhibit C. In this response, NIJC noted that DHS/ICE’s response to Requests 1-3 and 5-8 was incomplete, for many documents that would be responsive to those requests were not available on ICE’s website. *Id.*

---

<sup>1</sup> The June 21, 2011 letter mistakenly referred in the text to reference number 2011FOIA8931, instead of 2011FOIA8213. Exhibit B.

16. On October 22, 2011, DHS/ICE responded to NIJC's August 26, 2011 letter, treating it as an appeal of the adequacy of DHS/ICE's search. Exhibit D.

17. In its October 22, 2011 response, DHS/ICE determined that "additional responsive records may be found in locations the agency has not yet searched" and "remand[ed] [the] appeal to ICE FOIA for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents." *Id.*

18. Having received no further substantive response from DHS/ICE, NIJC filed a timely appeal on March 30, 2012. Exhibit E.

19. DHS/ICE received NIJC's appeal on April 16, 2012 and responded on April 18, 2012. Exhibit F.

20. DHS/ICE assigned NIJC's appeal of its FOIA request the reference number OPLA12-470. *Id.*

21. On June 1, 2012, DHS/ICE provided a further response to NIJC's appeal. Exhibit G.

22. In its June 1, 2012 response, DHS/ICE remanded NIJC's appeal to the DHS/ICE FOIA unit to continue processing NIJC's FOIA request. *Id.*

23. In remanding NIJC's April 27, 2011 FOIA request, DHS/ICE assigned it a new case number, 2012FOIA3030. *Id.*

24. Further, DHS/ICE stated that an "interim release of responsive records" to what is now 2012FOIA3030 would be completed by June 29, 2012. *Id.*

25. Although June 29, 2012 has passed, NIJC has not received any "interim release of responsive records" or any other substantive response from DHS/ICE to its FOIA request.

26. No exceptional circumstances prevent DHS/ICE from responding to NIJC's FOIA request.

**COUNT I**

27. NIJC incorporates and realleges paragraphs 1- 26 above.
28. The requested records in NIJC's FOIA request are agency records subject to FOIA.
29. Upon information and belief, DHS/ICE have records responsive to NIJC's FOIA request in their possession.
30. NIJC has a statutory right to the records it seeks, and there is no legal basis for DHS/ICE's refusal to produce them.
31. DHS/ICE's failure to execute a sufficient search and to produce responsive records violates FOIA, 5 U.S.C. § 552(a).
32. Alternatively, DHS/ICE's failure to produce the requested documents is arbitrary and capricious.
33. DHS/ICE failed to respond to NIJC's request and to its appeal within the statutory time period. Thus, NIJC is deemed to have exhausted its administrative remedies.

**RELIEF REQUESTED**

WHEREFORE, NIJC prays that this Court:

- a) Enter judgment in favor of NIJC and against defendants DHS and ICE;
- b) Declare that DHS and ICE unlawfully failed to respond to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030;
- c) Enjoin the withholding of responsive records to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030 and order the production of responsive documents and information;
- d) Find that DHS's and ICE's failure to respond to NIJC's FOIA Request 2011FOIA8213 and 2012FOIA3030 is arbitrary and capricious;

- e) Award NIJC its costs and reasonable attorneys' fees in this action; and
- f) Grant such other and further relief as the Court may deem just and proper.

Dated: July 9, 2012

Respectfully submitted,

By: /s/ Samuel Fifer

Samuel Fifer

samuel.fifer@snrdenton.com

James A. Klenk

james.klenk@snrdenton.com

Maria L. Domanskis

maria.domanskis@snrdenton.com

SNR DENTON US LLP

233 South Wacker Drive

Suite 7800

Chicago, IL 60606

Phone: (312) 876-8000

Fax: (312) 876-7934

*Attorneys for National Immigrant Justice  
Center*

13065369